

1 J. Andrew Coombs (SBN 123881)
 2 Annie S. Wang (SBN 243027)
 3 J. Andrew Coombs, A Prof. Corp.
 4 517 East Wilson Avenue, Suite 202
 Glendale, California 91206
 Telephone: (818) 500-3200
 Facsimile: (818) 500-3201

5 andy@coombspc.com
 6 annie@coombspc.com

7 Attorneys for Plaintiff
 Symantec Corporation

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 Symantec Corporation,

11 v. Plaintiff,

13 Bob Tarkens and Does 1 – 10, inclusive,

14 Defendants.

) Case No. C 07 5539

) COMPLAINT FOR COPYRIGHT
 INFRINGEMENT AND TRADEMARK
 INFRINGEMENT

) DEMAND FOR A JURY TRIAL

SBA

15 Plaintiff Symantec Corporation (“Symantec”) for its Complaint alleges as follows:

16 I. **Introduction**

17 1. Symantec brings this action as a result of Defendants’ systematic, unauthorized
 18 copying and distribution of Symantec’s software products through sales on the eBay online auction
 19 site. Defendants’ actions, commonly known as software piracy, are willful and cause substantial
 damage to Symantec and to the software industry.

20 2. Symantec is a global leader in developing and providing security and performance
 21 enhancing software for computers. Its products and services protect computers and networks from
 22 malicious threats such as viruses, spoofing, intrusion by “hackers” and thieves, and unwanted
 23 interruptions such as spam. The security software industry is competitive, and Symantec
 24 undertakes great expense and risk in conceiving, developing, testing, manufacturing, marketing,
 25 and delivering its software products to consumers. Software piracy, including piracy on eBay,
 undermines Symantec’s investment and creativity, and misleads and confuses consumers.

26 3. Defendants, through usernames including “bobt426” and, on information and belief,
 27 other aliases, has made, offered for sale, sold, and distributed unauthorized copies of Symantec
 28 software (the “Unauthorized Software Product”) including at least the following products:

1 PCAnywhere 12.0 (“PCAnywhere”), Norton Ghost 2005 9.0 (“Norton Ghost”), and Partition
 2 Magic 8.0 (“Partition Magic”) (collectively “Symantec Software”). Additional Doe defendants –
 3 whose identities will be determined in discovery – support, assist, supervise and/or supply
 4 Defendants in these illegal activities. Symantec owns registered United States copyrights and
 5 trademarks including but not limited to the foregoing products and their associated marks,
 respectively.

6 4. Defendants’ activities constitute willful copyright infringement and willful
 7 trademark infringement pursuant to the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.* (the
 8 “Copyright Act.”) and the Lanham Trademark Act, as amended, 15 U.S.C., § 1051, *et seq.* (the
 9 “Lanham Act”). Symantec requests an injunction, and that Defendants pay damages, costs, and
 10 attorneys’ fees.

II. Jurisdiction and Venue

11 5. The Court has jurisdiction over the subject matter pursuant to 15 U.S.C. § 1121, 28
 12 U.S.C. § 1331 and § 1338(a).

13 6. The events giving rise to the claims alleged herein occurred, among other places,
 14 within this judicial district. Venue in the Northern District of California is proper pursuant to 28
 15 U.S.C. § 1391(b) and § 1400(a).

III. The Parties

A. Plaintiff Symantec and Its Products

17 7. Symantec is a corporation duly organized and existing under the laws of the State of
 18 Delaware, having its principal place of business in Cupertino, California.

19 8. The Symantec Software is copyrightable subject matter, and Symantec owns
 20 exclusive rights under the Copyright Act to reproduce and distribute to the public copies of
 21 Symantec Software in the United States. A list of registrations including but not limited to the
 22 Symantec Software is attached hereto as Exhibit A (“Symantec’s Copyrights”).

23 9. Products manufactured and sold by Symantec bear Symantec’s trademarks,
 24 including without limitation, the GHOST, GOBACK, NORTON, PCANYWHERE, and
 25 SYMANTEC trademarks (collectively “Symantec’s Trademarks”). Symantec uses Symantec’s
 26 Trademarks on computer software as indicia of Symantec’s high quality products. Each year
 27 Symantec expends significant resources to develop and maintain the considerable goodwill it
 enjoys in Symantec’s Trademarks and in its reputation for high quality.

1 10. Symantec has secured registrations for Symantec's Trademarks, all of which are
2 valid, extant and in full force and effect. Symantec's Trademarks are exclusively owned by
3 Symantec. A non-exhaustive list of registrations is attached hereto as Exhibit B. Symantec, or its
4 predecessors in interest, has continuously used each of Symantec's Trademarks from the
5 registration date, or earlier, until the present and at all times relevant to the claims alleged in this
Complaint.

6 11. As a result of advertising and sales, together with longstanding consumer
7 acceptance, Symantec's Trademarks identify Symantec's products and authorized commercial
8 distribution of these products. Symantec's Trademarks have each acquired secondary meaning in
9 the minds of consumers throughout the United States and the world. Symantec's Copyrights and
10 Symantec's Trademarks are collectively referred to herein as "Symantec's Intellectual Properties."

11 **B. Defendants**

12 12. Defendant Bob Tarkens ("Tarkens") is an individual. Symantec is informed and
believes that Tarkens is a resident of San Francisco, California. Tarkens does business under the
eBay user ID "bobt426." Other aliases or eBay user IDs will be determined in discovery. Tarkens,
through his online identity or identities, does business in California through sales and distribution
of the Unauthorized Software Product in the State of California, among other places.

13 13. Upon information and belief, Does 1 – 10 are either entities or individuals who are
subject to the jurisdiction of this Court. Upon information and belief, Does 1 – 10 are principals,
supervisory employees, or suppliers of one or other of the named defendants or other entities or
individuals who are, in this judicial district, manufacturing, distributing, selling and/or offering for
sale merchandise without authorization that infringes Symantec's Intellectual Properties. The
identities of the various Does are unknown to Symantec at this time. The Complaint will be
amended to include the names of such individuals when identified. Tarkens and Does 1 – 10 are
collectively referred to herein as "Defendants."

14 **IV. Defendants' Infringing Activities**

15 14. Defendants use, among other things, the Internet auction site known as eBay to sell
and distribute products, including pirated copies of software, to consumers. At any given time,
there are millions of items listed on eBay for bid or purchase by its more than one hundred million
(100,000,000) registered users. Buyers have the option to purchase items in an auction-style
format or items can be purchased at a fixed price through a feature called Buy it Now. Through the
eBay "feedback" feature, buyers and sellers may (but are not required) to post positive, neutral or

1 negative "feedback" or comments on their purchase and sale experience. While feedback can give
2 some indication of sales volume, actual sales may far exceed the number of feedback entries a
3 seller receives.

4 15. Among Defendants' products offered for sale and sold on eBay, and distributed to
5 purchasers, are unauthorized copies of Symantec Software. On information and belief, Defendants
6 or their agents made such copies. Symantec has not authorized Defendants or their agents to make
7 or distribute copies of the Symantec Software. Indeed, Symantec has not licensed Defendants to
distribute its software, period.

8 16. Defendants also use images confusingly similar or identical to Symantec's
9 Trademarks, to confuse consumers and aid in the promotion of their unauthorized products.
10 Defendants' use of Symantec's Trademarks includes importing, advertising, displaying,
11 distributing, selling and/or offering to sell unauthorized copies of the Symantec Software.
12 Defendants' use began long after Symantec's adoption and use of Symantec's Trademarks, and
13 after Symantec obtained the copyright and trademark registrations alleged above. Neither
14 Symantec nor any authorized agents have consented to Defendants' use of the Symantec
Trademarks.

15 17. Defendants have, through over a thousand sales, obtained a substantial "feedback
rating" through the eBay feedback system. This feedback rating, obtained essentially through
16 Defendants' illegal activities, may further confuse consumers and aid in even wider distribution of
17 unauthorized copies of the Symantec Software

18 18. Defendants' actions have confused and deceived, or threatened to confuse and
19 deceive, the consuming public concerning the source and sponsorship of the unauthorized copies of
20 the Symantec Software offered, sold and distributed by Defendants. By their wrongful conduct,
21 Defendants have traded upon and diminished Symantec's goodwill.

22 **FIRST CLAIM FOR RELIEF**

23 **(For Copyright Infringement)**

24 19. Symantec repeats and realleges all of the allegations contained in paragraphs 1
through 18, inclusive, as though set forth herein in full.

25 20. As alleged herein, Defendants' activities infringe valid and effective copyrights
26 registered by Symantec, and induce, cause, and materially contribute to infringement. Defendants'
27 infringement was willful.

1 21. Symantec has suffered and continues to suffer direct and actual damages as a result
 2 of Defendants' infringing conduct. The full extent of such damages, including profits by
 3 Defendants, will be determined following the accounting by Defendants pursuant to 17 U.S.C. §
 4 504. Prior to final judgment Symantec may elect to recover statutory damages of up to \$150,000
 5 for each of Symantec's Copyrights infringed, as an alternative to actual damages and profits.

6 22. Symantec has no other adequate remedy at law and has suffered and continues to
 7 suffer irreparable harm and damage as a result of Defendants' acts. Unless enjoined by the Court,
 8 Defendants' infringing activity will continue, with attendant irreparable harm to Symantec.
 9 Accordingly, Symantec seeks injunctive relief pursuant to 17 U.S.C. § 502 and seizure of
 10 unauthorized copies of the Symantec Software, including the means of production as provided by
 11 17 U.S.C. § 503.

12 23. By reason of the foregoing, Symantec has incurred and will continue to incur
 13 attorneys' fees and other costs in connection with the prosecution of its claims. Symantec is
 14 entitled to recover its fees and costs from the Defendants, and each of them, pursuant to 17 U.S.C.
 15 § 505.

16 **SECOND CLAIM FOR RELIEF**

17 **(For Trademark Infringement)**

18 24. Symantec repeats and realleges all of the allegations contained in paragraphs 1
 19 through 23, inclusive, as though set forth herein in full.

20 25. Defendants' manufacture, importation, advertisement, display, promotion,
 21 marketing, distribution, sale and/or offer for sale of the unauthorized copies of the Symantec
 22 Software is likely to cause confusion or to cause mistake or to deceive the relevant public and trade
 23 regarding the affiliation, sponsorship, endorsement or approval of the Unauthorized Software
 24 Product by Symantec. Such confusion, mistake and deception is aggravated by the use of
 25 Symantec's Trademarks on the Unauthorized Software Product in the same type of goods made,
 26 imported and sold by or under authority of Symantec.

27 26. Defendants, and each of them, acted with knowledge of the federally registered
 28 trademarks alleged herein and of the valuable goodwill Symantec enjoys in connection therewith,
 29 with intent to confuse, mislead and deceive the public into believing that the unauthorized copies of
 30 the Symantec Software was made, imported and sold by Symantec, or are in some other manner,
 31 approved or endorsed by Symantec.

1 27. Symantec has suffered and continues to suffer irreparable harm and damage as a
 2 result of Defendants' acts of trademark infringement in amounts thus far not determined but within
 3 the jurisdiction of this Court, which amounts should each be trebled pursuant to 15 U.S.C. § 1117.
 4 In order to determine the full extent of such damages, including such profits as may be recoverable
 5 under 15 U.S.C. § 1117, Symantec will require an accounting from each Defendant of all monies
 6 generated from the manufacture, importation, distribution and/or sale of the Unauthorized Software
 7 Product as alleged herein. In the alternative, Symantec may elect to recover statutory damages
 8 pursuant to 15 U.S.C. § 1117 (c).

9 28. Symantec has no other adequate remedy at law and has suffered and continues to
 10 suffer irreparable harm and damage as a result of the above-described acts of infringement.
 11 Symantec is informed and believes, and upon that basis alleges, that, unless enjoined by the Court,
 12 the unlawful infringement will continue with irreparable harm and damage to Symantec.
 13 Accordingly, Symantec seeks and requests preliminary and permanent injunctive relief pursuant to
 14 15 U.S.C § 1116.

15 29. By reason of the foregoing, Symantec has incurred and will continue to incur
 16 attorneys' fees and other costs in connection with the prosecution of its claims herein, which
 17 attorneys' fees and costs Symantec is entitled to recover from Defendants, and each of them,
 18 pursuant to 15 U.S.C. § 1117 (c).

PRAYER FOR RELIEF

19 WHEREFORE, Symantec asks this Court to order:

20 A. That Defendants, their agents, servants, employees, representatives, successor and
 21 assigns, and all persons, firms, corporations or other entities in active concert or participation with
 22 any of said Defendants, be immediately and permanently enjoined from:

- 23 1) Directly or indirectly infringing Symantec's Intellectual Properties in any manner,
 24 including generally, but not limited to, reproduction, manufacture, importation,
 25 distribution, advertising, selling and/or offering for sale any merchandise which
 26 infringes said Symantec's Intellectual Properties, and, specifically:
- 27 2) Reproducing, importing, manufacturing, distributing, advertising, selling and/or
 28 offering for sale the Unauthorized Software Product or any other unauthorized products
 29 which picture, reproduce, copy or use the likenesses of or bear a confusing and/or
 30 substantial similarity to any of Symantec's Intellectual Properties;

- 1 3) Reproducing, importing, manufacturing, distributing, advertising, selling and/or
- 2 offering for sale in connection thereto any unauthorized promotional materials, labels,
- 3 packaging or containers which picture, reproduce, copy or use the likenesses of or bear
- 4 a confusing and/or substantial similarity to any of Symantec's Intellectual Properties;
- 5 4) Engaging in any conduct that tends falsely to represent that, or is likely to confuse,
- 6 mislead or deceive purchasers, Defendants' customers and/or members of the public to
- 7 believe the actions of Defendants, the products sold by Defendants, or Defendants
- 8 themselves are connected with Symantec, are sponsored, approved or licensed by
- 9 Symantec, or are in some way affiliated with Symantec;
- 10 5) Affixing, applying, annexing or using in connection with the importation, manufacture,
- 11 distribution, advertising, sale and/or offer for sale or other use of any goods or services,
- 12 a false description or representation, including words or other symbols, tending to
- 13 falsely describe or represent such goods as being those of Symantec;
- 14 6) Otherwise competing unfairly with Symantec in any manner;
- 15 7) Destroying or otherwise disposing of
 - 16 a. Merchandise falsely bearing Symantec's Intellectual Properties;
 - 17 b. Any other products which picture, reproduce, copy or use the
 - 18 likenesses of or bear a substantial similarity to any of Symantec's Intellectual
 - 19 Properties;
 - 20 c. Any labels, packages, wrappers, containers or any other unauthorized
 - 21 promotion or advertising material item which reproduces, copies, counterfeits,
 - 22 imitates or bears any of Symantec's Intellectual Properties;
 - 23 d. Any molds, screens, patterns, plates, negatives or other elements
 - 24 used for making or manufacturing products bearing Symantec's Intellectual
 - 25 Properties;
 - 26 e. Any sales and supply or customer journals, ledgers, invoices,
 - 27 purchase orders, inventory control documents, bank records, catalogs and all
 - 28 other business records, believed to concern the manufacture, purchase,
 - advertising, sale or offering for sale of Unauthorized Software Product;
- B. That Symantec and its designees are authorized to seize the following items which are in Defendants' possession, custody or control:
 - 1) All Unauthorized Software Product;

- 2) Any other unauthorized product which reproduces, copies, counterfeits, imitates or bear any of the Symantec's Intellectual Properties, or any part thereof;
- 3) Any molds, screens, patterns, plates, negatives, machinery or equipment, specifically including computers, servers, optical disc burners and other hardware used for making or manufacturing Unauthorized Software Product or unauthorized product which reproduces, copies, counterfeits, imitates or bears any of the Symantec's Intellectual Properties, or any part thereof.

C. That those Defendants infringing upon Symantec's Intellectual Properties be required to pay actual damages increased to the maximum extent permitted by law and/or statutory damages at Symantec's election;

D. That actual damages be trebled pursuant to 15 U.S.C. § 1117;

E. That Defendants account for and pay over to Symantec all damages sustained by Symantec and profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and that those profits be increased as provided by law;

F. That Symantec recovers from Defendants its costs of this action and reasonable attorneys' fees; and

G. That Symantec has all other and further relief as the Court may deem just and proper under the circumstances.

Dated: October 3rd, 2007

J. Andrew Coombs, A Professional Corp.

By:

J. Andrew Coombs
Annie S. Wang

Attorneys for Plaintiff Symantec Corporation

1
2 **DEMAND FOR JURY TRIAL**
3

4
5 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Symantec Corporation hereby
6 demands a trial by jury of all issues so triable.
7

8 Dated: October 9, 2007
9

10 J. Andrew Coombs, A Professional Corp.
11

12 By: 

13 J. Andrew Coombs
14 Annie S. Wang
15 Attorneys for Plaintiff Symantec Corporation
16

17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A**Copyright Registrations**

<u>Copyright Registration No.:</u>	<u>Title of Work:</u>	<u>Rights Owner:</u>
TX-4-715-125	Ghost	Symantec Corporation
TX-4-715-126	Ghost Explorer	Symantec Corporation
TX-4-715-127	Ghost v. 4.0a	Symantec Corporation
TX-4-715-123	Ghost 3.1a	Symantec Corporation
TX-4-715-124	Ghost 5.0a	Symantec Corporation
TX-4-715-125	Ghost 5.0e	Symantec Corporation
TX-6-361-699	Ghost 9.0	Symantec Corporation
TX-6-358-626	Norton Ghost 10.0	Symantec Corporation
TX-6-361-698	Norton Ghost 2003	Symantec Corporation
TX-4-739-697	Norton AntiVirus v. 4.0	Symantec Corporation
TX-4-832-174	Norton AntiVirus v. 5.0	Symantec Corporation
TX-4-908-397	Norton AntiVirus v. 5.00.02	Symantec Corporation
TX-5-704-654	Norton AntiVirus	Symantec Corporation
TX-6-312-240	Norton AntiVirus 2006	Symantec Corporation
TX-3-343-741	Symantec AntiVirus for Macintosh 3.0	Symantec Corporation
TX-3-772-059	Norton Utilities	Symantec Corporation
TX-4-396-091	Norton Utilities for Windows 95	Symantec Corporation
TX-4-421-276	Norton utilities for Windows 95 v.2.0	Symantec Corporation
TX-4-024-772	Norton Utilities v. 7.0	Symantec Corporation
TX-4-024-773	Norton Utilities v. 8.0	Symantec Corporation
TX-4-024-802	Norton utilities Windows 95	Symantec Corporation
TX-6-358-627	pcAnywhere v.10.5	Symantec Corporation
TX-6-358-628	pcAnywhere v. 11.0	Symantec Corporation
TX-4-977-907	pcAnywhere ce	Symantec Corporation
TX-6-358-647	pcAnywhere v. 12.0	Symantec Corporation
TX-5-300-088	pcAnywhere v. 9.0	Symantec Corporation
TX-5-300-087	pcAnywhere v. 9.2	Symantec Corporation
TX-4-977-907	pcAnywhere ce	Symantec Corporation
TX-5-382-105	Goback v. 3.0	Symantec Corporation
TX-5-382-108	Goback RTL v. 222	Symantec Corporation
TX-5-408-192	Goback v. 3.04	Symantec Corporation
TX-5-510-690	Goback v. 3.03	Symantec Corporation
TX-5-510-691	Goback v. 3.0	Symantec Corporation
TXu-1-060-557	PartitionMagic 8.0	Symantec Corporation

EXHIBIT B**Trademark Registrations**

<u>Trademark Registration No.:</u>	<u>Title of Work:</u>	<u>Rights Owner:</u>
1107115	Ghost	Symantec Corporation
2271088	Goback	Symantec Corporation
2243057	Live Update	Symantec Corporation
1758084	Norton AntiVirus	Symantec Corporation
2488092	Norton SystemWorks	Symantec Corporation
1781148	PCAnywhere	Symantec Corporation
2205386	Symantec	Symantec Corporation
2540842	Norton SystemWorks	Symantec Corporation
1508960	Norton Utilities	Symantec Corporation
1981682	Partition Magic	Symantec Corporation
1683688	Symantec	Symantec Corporation
1654777	Symantec	Symantec Corporation
3097024	Symantec	Symantec Corporation
3009890	Symantec	Symantec Corporation
3182978	Winfax	Symantec Corporation